



US Army Corps
of Engineers
Detroit District



Public Notice

Date: March 01, 2011
Closes: March 30, 2011

File No. LRE-2011-6

NATIONWIDE PERMIT REISSUANCE REQUEST FOR COMMENTS

On February 16, 2011, the U.S. Army Corps of Engineers published in the Federal Register its proposal to reissue its nationwide permits (NWP).

Nationwide permits are general permits issued on a nationwide basis to streamline the authorization of activities that result in minimal individual and cumulative adverse effects on the aquatic environment. Many of the proposed NWPs require notification to the district engineer before commencing the work, to ensure that the activities authorized by those NWPs have minimal individual and cumulative adverse impacts on the aquatic environment.

National Issues Concerning the Proposed NWPs: The Federal Register notice is the public's opportunity to comment on the proposed NWPs, general conditions, and definitions. Comments on national issues relating to these NWPs should be submitted to docket number COE-2010-0035 and/or ZRIN 0710-ZA05 at www.regulations.gov. Instructions for submitting comments are provided in the February 16, 2011, Federal Register notice. Comments on the proposed NWPs are due by April 18, 2011.

Regional Issues Concerning the Proposed NWPs, Including Regional Conditioning: Division engineers are authorized to add regional conditions specific to the needs and/or requirements of a particular region or state. Regional conditions are important mechanisms to ensure that impacts to the aquatic environment authorized by the NWPs are minimal, both individually and cumulatively. Division engineers may also suspend or revoke specific NWPs in certain geographic areas (e.g., states or watersheds) or high-value aquatic systems where impacts authorized by those NWPs may be more than minimal. Enclosure 1 lists the proposed NWPs by number and name, followed by the proposed General Conditions, and then followed by the proposed Detroit District Regional Conditions for specific NWPs, and Regional Conditions applicable to all Detroit District NWPs currently under consideration by the Great Lakes and Ohio River Division for Michigan. The Detroit District is seeking comments on the proposed regional conditions and seeking comments on the need for additional regional conditions to help ensure that impacts authorized by the proposed NWPs are minimal. Unless otherwise noted, all proposed regional conditions listed on this enclosure are applicable for activities in Michigan. Comments on regional issues relating to the proposed NWPs and regional conditions are to be sent to John Konik, Chief, Regulatory Office, U.S. Army Corps of Engineers, Detroit District, 477 Michigan Avenue, Detroit, Michigan 48226-2550, or by email to Henry Rosenfield at

henry.rosenfield@usace.army.mil. Comments relating to regional conditions are due by March 30, 2011. Similar public notices proposing regional conditions in other regions or States are being published by other division or district offices.

Draft decision documents, which include environmental documentation required by the National Environmental Policy Act, have been prepared by Corps Headquarters. The decision documents will address compliance of the NWP with the requirements for issuance under general permit authority. These documents, as well as the proposed NWPs, are available for viewing at Detroit District, 477 Michigan Avenue, Detroit, Michigan 48226-2550, or on the Internet at the www.regulations.gov site (docket ID number COE-2010-0035 and/or ZRIN 0710-ZA05). Final decision documents will be prepared for those NWPs that are issued. In addition, supplemental decision documents will be issued by division engineers to address their determinations concerning regional conditions for the NWPs.

Enclosure 2 provides points of further information, and a list of terms that are defined in the NWP document. Anyone wishing to provide comments may obtain a full text copy of the NWPs through www.regulations.gov (docket ID number COE-2010-0035 and/or ZRIN 0710-ZA05), the Corps home page, or the Federal Register address listed below.

Internet addresses:

Copies of the Federal Register notice and the draft decision documents will also be available at <http://www.regulations.gov> in docket ID number COE-2010-0035 and/or ZRIN 0710-ZA05, or at <http://www.gpo.gov/fdsys/pkg/FR-2011-02-16/pdf/2011-3371.pdf>. The Corps home page is: <http://www.usace.army.mil/inet/functions/cw/cecwo/reg/>. As an alternate, internet users can access the Federal Register through the Government Printing Office (GPO) at <http://www.gpoaccess.gov/fr/index.html>.

If you have questions on the regional conditions or Nationwide permits in Detroit District contact Henry Rosenfield at (313) 226-6706, or by e-mail to: henry.rosenfield@usace.army.mil.

John Konik
Chief, Regulatory Office
Engineering & Technical Service

Index of Proposed Nationwide Permits, Conditions, Further Information, and Definitions

Proposed Nationwide Permits

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5. Scientific Measurement Devices
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7. Outfall Structures and Associated Intake Structures
8. Oil and Gas Structures on the Outer Continental Shelf
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Proposed Nationwide Permit General Conditions

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Proposed Detroit District Regional Conditions in Michigan:

2. Structures in Artificial Canals.

The Detroit District proposes to revoke this Nationwide Permit.

7. Outfall Structures and Associated Intake Structures.

Detroit District NWP 7 Regional Conditions:

- a. On boatable waters, the face of the outfall shall not extend into the receiving water to impair navigation or create shoreline pockets capable of trapping debris.

10. Mooring Buoys.

Detroit District NWP 10 Regional Conditions.

- a. The application must provide the latitude and longitude (or UTM coordinates) of the buoy and the distance of the buoy offshore.
- b. The buoy must be clearly marked with the Corps of Engineers' File Number in letters at least 3 inches high and of contrasting color to the background color of the buoy.
- c. The mooring buoy must be marked in accordance with all relevant U.S. Coast Guard requirements.

12. Utility Line Activities.

Detroit District NWP 12 Regional Conditions:

- a. For substations and permanent access roads, no discharge is authorized in areas below the OHWM, areas subject to inundation by the adjacent water body, or areas which otherwise provide fish habitat functions.
- b. Impacts for substations and access roads are limited to 1/4 acre. Applicants must demonstrate that upland alternatives are not practicable.
- c. Impacted wetlands outside of permanently maintained rights of way shall be restored to the same or more valuable wetland type (e.g., forested wetlands shall be restored to forested wetlands). Within permanently maintained rights of way, impacted wetlands shall be restored, unless otherwise authorized by the Corps.
- d. The Corps of Engineers will conduct agency coordination with the Michigan Department of Environmental Quality for overall projects proposing more than 2 crossings of waters of the U.S. and/or more than one (1) acre of impacts to waters of the U.S.
- e. For utility lines placed across the channel of an authorized Federal navigation project, the following conditions apply:
 - 1) the line must be embedded at least 6 feet below the authorized Federal channel depth;

2) existing and proposed elevation information on precise plan and section scale drawings are required;

3) within 60 days after construction, an as-built survey must be provided indicating the points of entry and exit of the installation.

f. The application must provide the latitude and longitude (or UTM coordinates) of each end of the utility line at the limits of Corps jurisdiction (OHWM or upland limit of wetlands), and for each point between where the utility changes direction.

g. All excavated and dredged material, other than that used to backfill the trench as authorized pursuant to NWP12, shall be disposed of on uplands.

13. Bank Stabilization.

Detroit District NWP 13 Regional Conditions:

a. This NWP may apply to river segments which are components of a State Wild or Scenic River segment designated under Natural Resources and Environmental Protection Act (NREPA 1994 PA 451, as amended) Part 305 Natural Rivers or environmental areas designated under Part 323 Shorelands Protection and Management, only if Michigan Department of Environmental Quality has issued authorization.

14. Linear Transportation Projects.

Detroit District NWP 14 Regional Conditions:

a. For private road projects, the base width of the fill is limited to 16 feet. For private paths, the base width of the fill is limited to 6 feet. These limits apply unless the applicant provides a written statement supporting a variation, and the Corps accepts the justification. Culverts or other appropriate measures are required to maintain existing drainage patterns.

b. For private road projects, the length of the crossing is limited to 200 feet.

c. The selected route must be the least damaging practicable alternative.

d. The Corps of Engineers will conduct coordination with the Michigan Department of Environmental Quality for activities proposing more than 2 crossings of waters of the U.S. as part of the same project.

e. For public projects, the total impacts are limited to 3 acres for all crossings associated with the same project.

18. Minor Discharges.

Detroit District NWP 18 Regional Conditions:

a. The discharge material consists of clean, uncontaminated sand or crushed rock or stone.

b. This nationwide permit may apply to river segments which are components of a State wild or scenic river segment designated under Natural Resources and Environmental Protection Act (NREPA 1994 PA 451, as amended) Part 305 Natural Rivers, or environmental areas designated under Part 323 Shorelands Protection and Management, only if Michigan Department of Environmental Quality has issued authorization.

27. Aquatic Habitat Restoration, Establishment, and Enhancement Activities.

Detroit District NWP 27 Regional Conditions:

- a. The Corps of Engineers will conduct coordination with the Michigan Department of Environmental Quality for all activities under NWP 27.

29. Residential Developments.

Detroit District NWP 29 Regional Conditions:

- a. The discharge must not cause the loss of greater than 1/4 acre of non-tidal waters of the U.S.
- b. No discharge is authorized in areas below the OHWM, areas subject to inundation by the adjacent waterbody, or areas which provide fish habitat functions.
- c. The following attendant features are authorized under this NWP: garage, driveway, parking/turn areas, lawn up to 15 feet surrounding the buildings, storage shed, septic field, utilities, deck foundations, and access paths.
- d. Culverts and other measures to maintain pre-existing drainage patterns across the site are required.
- e. Where the option is available, on-site sewage treatment systems shall utilize pump-back systems to upland.

39. Commercial and Institutional Developments.

Detroit District NWP 39 Regional Conditions:

- a. Use of this Nationwide Permit is limited to expansion of existing, on-going commercial and institutional establishments. It may not be used by an enterprise to establish a new location.
- b. The discharge must not cause the loss of greater than 1/4 acre of non-tidal waters of the U.S.

41. Reshaping Existing Drainage Ditches.

Detroit District NWP 41 Regional Conditions:

- a. All excavated materials shall be placed on uplands.

42. Recreational Facilities.

Detroit District NWP 42 Regional Conditions:

- a. No discharge is authorized in areas below the OHWM, areas subject to inundation by the adjacent water body, or areas which otherwise provide fish habitat functions of any kind.
- b. The discharge must not cause the loss of greater than 1/4 acre of non-tidal waters of the U.S.
- c. Golf courses and ski areas are not authorized.

43. Stormwater Management Facilities.

Detroit District NWP 43 Regional Conditions:

- a. Construction of new facilities is not authorized.
- b. Maintenance activities are limited to 1/2 acre, in facilities which were designed for the primary purpose of stormwater detention, retention, and/or treatment.

44. Mining Activities.

The Detroit District proposes to revoke this Nationwide Permit.

45. Repair of Uplands Damaged by Discrete Events.

Detroit District NWP 45 Regional Conditions:

- a. The Corps of Engineers will conduct coordination with the Michigan Department of Environmental Quality for all activities proposing restoration of Great Lakes coastal areas.

A. Land-Based Renewable Energy Generation Facilities.

Detroit District NWP A Regional Conditions:

The Detroit District does not propose any regional conditions at this time.

B. Water-Based Renewable Energy Generation Pilot Projects.

Detroit District NWP B Regional Conditions:

The Detroit District does not propose any regional conditions at this time.

Detroit District Regional Conditions Applicable to all NWPs:

(1) Based on a joint processing agreement between the Corps of Engineers (Corps) and the Michigan Department of Environmental Quality (MDEQ), submittal of a joint Corps/MDEQ permit application is required for projects in Michigan. The submittal of an application is not an authorization to perform the work.

(2) In NWP verification letters, the Corps will state that: "The permittee shall not initiate activities authorized under the NWP until all required State authorizations have been received."

(3) If the Michigan Department of Environmental Quality has issued its authorization, we shall presume that 401 Water Quality Certification and Coastal Zone Management certification has been satisfied.

(4) Excavation/dredging from areas of known or suspected contamination requires:

- a. Placement of the material in a Confined Disposal Facility or MDEQ Class II landfill; or
- b. Placement of the material shoreward of a bulkhead or in uplands, and covered with at least 2 feet of clay and a layer of sod; or
- c. Testing to demonstrate that the material is not contaminated. If the material is determined to be contaminated, it must be disposed of in a. or b. above.

(5) Dredging will be performed during MDNR preferred dredge periods except when the Corps has specifically determined that the limits are unwarranted (for example, MDEQ has issued a permit and has not restricted the dredging activities to these periods).

(6) Critical Resource Waters: NWP General Condition 21 (GC 21) designates Critical Resource Waters, and allows for Regional additions to the list. The following Critical Resource Waters are located in the Detroit District and subject to the restrictions and limitations identified in GC 21:

- a. NOAA-Designated Marine Sanctuaries: The Thunder Bay National Marine Sanctuary and Underwater Preserve is located in Lake Huron off Alpena, Michigan.
- b. National Estuarine Research Reserves (NERR): There are no NERRs within the Detroit District.
- c. State Natural Heritage Sites: There are no areas designated as state natural heritage sites through a state legislative or regulatory process.
- d. Outstanding National Resource Waters or Other Waters Officially Designated: The list of Critical Resources Waters (General Condition 19) in Michigan is amended to include the following:

All areas designated under Part 351, Wilderness and Natural Areas, of the Natural Resources and Environmental Protection Act, Public Act 451, 1994.

All rivers designated under Part 305, Natural Rivers, of the Natural Resources and Environmental Protection Act.

All Environmental Areas designated under Part 323, Shorelands Protection And Management, of the Natural Resources and Environmental Protection Act.

(7) National Wild and Scenic Rivers (NWSR): NWP General Condition 15 (GC 15) designates Wild and Scenic Rivers, and the restrictions applicable to them. The following are Wild and Scenic Rivers located within the Detroit District and subject to the restrictions and limitations identified in GC 15:

Au Sable River – main stem from the Mio Pond project boundary downstream to the Alcona Pond project boundary.

Bear Creek (Manistee County) – Coates Highway to the confluence with the Manistee River.

Black River (Gogebic County) - from the Ottawa National Forest boundary to Lake Superior.

Carp River – from the west section line of section 30, T43N, R5W to Lake Huron.

Indian River – from Hovey Lake to Indian Lake.

Manistee River – from the MDNR boat ramp below Tippy Dam to the Michigan State Highway 55 bridge.

Ontonagon River – East Branch from its origin to the Ottawa NF boundary; the Middle Branch from its origin to the northern boundary of the Ottawa NF, the Cisco Branch from its origin at Cisco Lake Dam to its confluence with Ten-Mile Creek south of Ewen, the West Branch from its confluence with Cascade Falls to Victoria Reservoir.

Paint River – main stem from the confluence of the North and South Branches to the Ottawa NF boundary, the North Branch from its origin to its confluence with the South Branch, the South Branch from its origin to its confluence with the North Branch.

Pere Marquette River – the segment downstream from the junction of the Middle and Little south Branches to its junction with Pere Marquette Highway (old US Highway 31).

Pine River – the segment from Lincoln Bridge to the east 1/16th line of Section 16, T21N, R13W.

Presque Isle River – the main stem from the confluence of the East and West Branches to the Minnewawa Falls, the East Branch within the Ottawa NF, the South Branch within the Ottawa NF, the West Branch within the Ottawa NF.

Sturgeon River (Baraga and Houghton Counties) – from its entry into the Ottawa NF to the northern boundary of the Ottawa NF.

Sturgeon River (Alger and Delta Counties) – from the north line of Section 26, T43N, R19W to Lake Michigan.

Tahquamenon River East Branch – from its origin to the Hiawatha National Forest boundary.

Whitefish River – The main stem from its confluence with the East and West Branches to Lake Michigan. The East Branch from the crossing of County Road 003 to its confluence with the West Branch. The West Branch from County Road 444 to its confluence with the East Branch.

Yellow Dog River – From its origin at the outlet of Bulldog Lake Dam to the boundary of the Ottawa NF.

Portions of the following have also been designated as a “study river” for possible inclusion in the system: Brule River, Carp River, Little Manistee River, Paint River, Presque Isle River, Ontonagon River, Sturgeon River (Baraga and Houghton Counties), Sturgeon River (Alger and Delta Counties), Tahquamenon River, White River, Whitefish River.

(8) NWP General Condition 17 (GC 17) addresses Critical Habitats for Endangered Species. The following Critical Habitats located within the Detroit District are subject to the restrictions applicable to Critical Habitat for Federally Listed Threatened and Endangered Species identified in GC 17:

Critical habitat for the piping plover (*Charadrius melodus*) in Michigan was designated in the May 7, 2001 Federal Register (Vol. 66, No. 88, pages 22938-22969).

Revised Critical habitat for the Hine’s Emerald Dragonfly (*Somatochlora hineana*) in Michigan was finalized April 23, 2010 Federal Register (Vol. 75, No. 78, pages 21394-21453).

Further Information

1. District Engineers have authority to determine if an activity complies with the terms and conditions of a NWP.
2. NWPs do not obviate the need to obtain other federal, state, or local permits, approvals, or authorizations required by law.
3. NWPs do not grant any property rights or exclusive privileges.
4. NWPs do not authorize any injury to the property or rights of others.
5. NWPs do not authorize interference with any existing or proposed Federal project.

Proposed Nationwide Permit Definitions

Best management practices (BMPs)	Preservation
Compensatory mitigation	Re-establishment
Currently serviceable	Rehabilitation
Discharge	Restoration
Enhancement	Riffle and pool complex
Ephemeral stream	Riparian areas
Establishment (creation)	Shellfish seeding
High Tide Line	Single and complete linear project
Historic property	Single and complete non-linear project
Independent utility	Stormwater management
Intermittent stream	Stormwater management facilities
Loss of waters of the United States	Stream bed
Non-tidal wetland	Stream channelization
Open water	Structure
Ordinary high water mark	Tidal wetland
Perennial stream	Vegetated shallows
Practicable	Waterbody
Pre-construction notification	